IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
ORDER

Krishan lal Malik Vs. Additional District Judge No. 2, Sri Ganganagar & Ors.

(S.B.Civil Writ Petition No. 5638/2007)

Date of judgment:- 20.12.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr. V.K. Aggarwal, for the petitioner.
Mr. G.R. Goyal, for the respondents.

BY THE COURT:-

This writ petition is directed against order dated 24.05.2007 passed by the Additional District Judge No. 2, Sri Ganganagar, in civil misc. appeal no. 18/06 (35/06), whereby an appeal preferred by the defendant, petitioner herein, against the order dated 02.06.06 passed by Civil Judge (JD) No. 2, Sri Ganganagar, in civil suit no. 41/98 striking out the defence of the petitioner against eviction, has been rejected.

The brief facts of the case are that the plaintiff, respondent no. 3 herein preferred a suit for eviction against the defendant petitioner herein before the Civil Judge (JD) No. 2, Sri Ganganagar, on the ground of default in payment of rent in terms of Section 13 (1) (a) of The Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (in short 'the Act of 1950' hereinafter). The amount of rent of the suit premises in terms of Section 13 (3) of the Act of 1950 was provisionally determined

by the learned trial court vide order dated 03.08.2001. The respondent no. 3 preferred an application for striking out of the defence of the petitioner on account of his failure to deposit or pay the rent for month of October to December 2004 within the time specified by Section 13 (4) of the Act of 1950. In the application inter alia it was alleged that the rent for the month of September, 2004 was deposited by the defendant in the plaintiff's bank account on 21.09.04 and thereafter, the rent due for the month of October to December 2004 has not been deposited within the specified time inasmuch as an amount of Rs. 350/- was deposited on 13.01.05. Accordingly, it was pleaded that the rent for the month of October, 2004 has not been deposited and the rent for the month of November, 2004 has been deposited after a delay of about 1½ month.

The application was contested by the defendant, the petitioner herein by way of reply, wherein it was submitted that he had no intention to commit default in payment of rent, the delay in depositing the rent has occurred on account of his illness which deserves to be condoned. Besides, without prejudice to the aforesaid stand taken the petitioner contended that after coming into force of the Rajasthan Rent Control Act, 2001 (in short 'the Act of 2001' hereinafter) an application was preferred by the respondent no. 3 before the Rent Tribunal, Sri Ganganagar, which stands allowed vide judgment dated

24.09.04 and the revised rent of the premises has been fixed at Rs. 543/- per month. Therefore, after revision of the rent as aforesaid under the Act of 2001, order dated 03.08.2001 passed by the learned trial court determining the provisional rent has rendered infructuous. It was submitted that in compliance of order dated 24.09.04, on the basis of the revised rent the amount of the difference payable has already been deposited by the defendant, petitioner herein on 11.3.05, therefore, the application preferred by the plaintiff-respondent no.3 herein, is not maintainable.

After hearing both the parties, the learned trial court arrived at the finding that admittedly, the defendant has made default in payment of rent and if any sufficient cause for not depositing the rent within the specified period was existing, then the defendant was required to make an appropriate application for extension of time in terms of Section 13 (4) of the Act of 1950. Relying upon the judgment of the Hon'ble Supreme Court in the matter of Nasiruddin Vs. Sita Ram,2002 (3) DNJ SC 180, the learned tribunal held that the provisions of Section 5 cannot be invoked for condonation of delay in depositing the rent, in view of the specific provision contained in Section 13 (4) of the Act of 1950. The learned trial court further observed that no provision in the Act of 2001 has been shown, which renders the order determining the rent provisionally under Section 13(3) of

the Act of 1950 ineffective, on account of determination of revised rent under Section 6 of Act of 2001. Accordingly, the application preferred by the plaintiff for striking out the defence was allowed vide order dated 02.06.06. The appeal preferred by the defendant, petitioner herein, against the said order has been dismissed by the appellate court vide order dated 24.05.07.

It is contended by the learned counsel appearing on behalf of the petitioner that the default in depositing the rent within the time specified was absolutely bona fide and the learned trial court has seriously erred in refusing to condoned the delay in depositing the rent. The learned counsel urged that the respondent no. 3 cannot be permitted to continue the proceedings under the Act of 1950 so also under the Act of 2001 simultaneously. It is contended that under the Act of 1950 there is a provision for striking out the defence on account of non-payment of rent determined provisionally, within the time specified, but there is no such provision under the Act of 2001. According to the learned counsel the respondent no. 3 cannot get the defence against the eviction struck out under the Act of 1950 and at the same time claim enhancement of the rent under the Act of 2001. Precisely, according to the learned counsel the rent of the suit premise having been revised under the Act of 2001 vide order dated 24.09.04, the order passed by the trial court determining the rent provisionally under Section 13 (3) of

the Act of 1950 has rendered infructuous and the same cannot be enforced.

Per contra, the learned counsel appearing on behalf of respondent no. 3 submitted that admittedly, the petitioner has failed to deposit the rent determined provisionally, for the month of October 2004 and has deposited the rent for the month of November, 2004 with a delay of about 1½ month, therefore, the defence of the petitioner against the eviction has rightly been struck out by the learned trial court. The learned counsel urged that in view of provision of Section 32 of the Act of 2001, the suit or other proceedings under the repealed Act i.e. Act of 1950 pending on the date of commencement of the Act of 2001 shall be continued and disposed of in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and the Act of 2001 had not been enacted, therefore, the contention of the petitioner that after the revision of rent under the Act of 2001 the order passed by the learned trial court determining the rent provisionally has rendered ineffective, is devoid of any merit.

I have considered the rival submissions, perused the order impugned and other documents on record.

It is not in dispute that the provisional rent determined by the learned trial court vide order dated 03.08.01, has not been deposited by the petitioner for the month of October, 2004 and

November, 2004 within the time specified by Section 13 (4) of the Act of 1950. As per the said provision the petitioner was required to continue to deposit in court or pay to the landlord month by month, monthly rent subsequent to the period up to which determination has been made by the 15th of succeeding month or within such further time not exceeding 15 days as may be extended by the court, at the monthly rate at which the rent was determined by the court under Section 13 (3). Admittedly, the rent for the month of October, 2004 to December, 2004 having become due, the petitioner deposited a sum of Rs. 350/- on 13.01.05. Thus, the petitioner has failed to deposit the rent for the month of October, 2004 and has deposited the rent for the month of November, 2004 with the delay of about 1½ month. If the amount of Rs. 350/- deposited is taken to be rent for the month of October and November, 2004 then the rent for both these months have not been deposited by the petitioner within the time specified and he has failed to deposit the rent for the month of December, 2004. Admittedly, the petitioner had not preferred any application for extension of time to deposit the rent for the respective month, in terms of Section 13 (4) of the Act of 1950, at the relevant time before the learned trial court. Moreover, even the trial court has no jurisdiction to extend the time for deposit of monthly rent determined provisionally beyond 15 days. The provisions of Section 5 of Limitation Act cannot be

invoked for condonation of delay where the default takes place in terms of the provisions of Section 13 (4) of the Act of 1950. This aspect of the matter stands covered by the decision of the Hon'ble Supreme Court in Nasiruddin's Case (supra). Thus, the learned trial court has committed no error in refusing to condoned the delay and striking out the defence of the petitioner against eviction in terms of Section 13 (5) of the Act of 1950.

Coming to the next contention of the learned counsel that on application being preferred by the respondent landlord under Section 6 of the Act of 2001, the rent having been revised by the learned Rent Tribunal, Sri Ganganagar vide order dated 24.09.04, the order passed by the learned trial court determining rent provisionally in terms of Section 13 (3) of the Act of 1950 in the pending suit for eviction, has rendered infructuous, it is to be noticed that as per the provisions of Section 32 of the Act of 2001, the suit pending under the repealed Act on the date of commencement of the Act of 2001 shall be continued and disposed of, in accordance with the provisions of repealed Act, as if the repealed Act had continued in force and the Act of 2001 had not been enacted. Neither there is any specific provision in the Act of 2001 excluding the applicability of the provisions of Sections 13(3) to 13(5) of the Act of 1950, in case the rent is revised under Section 6 of the Act of 2001 nor by necessary implication, it can be inferred that

after revision of the rent under the Act of 2001, the order passed by the trial court determining the rent of the suit premises provisionally in terms of Section 13 (3) of the Act of 1950 shall render infructuous and thereafter, in case of default in payment of rent within the time specified in terms of Section 13 (4) of the Act of 1950, the provisions of Section 13 (5) cannot be invoked by the learned trial court for striking out the defence of the tenant against eviction. To the contrary, in view of the provisions of Section 32(2) of the Act of 2001, the suit pending under the Act of 1950, on the date of commencement of the Act of 2001 is required to be continued and disposed of in accordance with the provisiosn of the Act of 1950, as if, the same had continued in force and the Act of 2001 had not been enacted.

There is yet another aspect of the matter. Admittedly, the revised rent was determined by the learned Rent Tribunal in terms of Section 6 of the Act of 2001 vide order dated 24.09.04. It is not the case of the petitioner that he has deposited the revised rent for the month of October, 2004 to December, 2004 within the time specified by Section 13 (4) of the Act of 1950, therefore, he stands absolved from the liability to deposit the monthly rent determined provisionally by the learned trial court in terms of Section 13 (3) of the Act of 1950. Thus, the petitioner having failed to comply with the provision of Section 13 (4) his defence against eviction has rightly been struck out by

the learned trial court in terms of Section 13 (5) of the Act of 1950.

In the result, the writ petition fails, it is hereby dismissed.

No order as to costs.

(SANGEET LODHA), J.